

December 14, 2009

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

FOR THE TENTH CIRCUIT

EDWARD MUNIZ,

Plaintiff - Appellant,

v.

NURSE KASPAR; DOUG ROBERTS,

Defendants - Appellees.

No. 09-1543

(D.C. No. 1:07-CV-01914-MSK-MJW)

ORDER

Before **BRISCOE, LUCERO** and **HOLMES**, Circuit Judges.

Appellant's notice of appeal is untimely. Because the district court's judgment was entered on August 14, 2009, the notice of appeal was due on or before September 14, 2009. *See* Fed. R. App. P. 4 (a)(1)(A) (notice of appeal due within 30 days). Appellant's notice of appeal was not filed until December 4, 2009.

Appellant's Rule 59 motion to alter or amend judgment was untimely and, therefore, did not toll the time for filing the notice of appeal. *See* Fed. R. App. P. 4 (a)(4)(A). His motion for extension of time to file his notice of appeal was also untimely. *See* Fed. R. App. P. 4 (a)(5) (motion for extension must be filed no

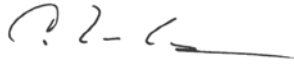
later than 30 days after the time for filing the notice of appeal expired). This court cannot extend the time for filing a notice of appeal. *See* Fed. R. App. P. 4 (a)(5) and 26 (b).

Because the notice of appeal was untimely, this court lacks jurisdiction to consider this appeal. *Bowles v. Russell*, 551 U. S. 205 (2007).

If and when the district court rules on his pending post-judgment motion, appellant may appeal from that ruling, if he wishes.

APPEAL DISMISSED.

Entered for the Court,
ELISABETH SHUMAKER, Clerk of Court

by: 
Christine Van Coney
Counsel to the Clerk